

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF TOLL AND ACCESS)	
CHARGE PRICING AND TOLL SETTLEMENT)	
AGREEMENTS FOR TELEPHONE UTILITIES)	CASE NO. 8838
PURSUANT TO CHANGES TO BE EFFECTIVE)	PHASE IV
JANUARY 1, 1984)	

O R D E R

Introduction

This Order addresses the limited matter of the Commission's policy on WATS¹ access lines. The matter is before the Commission on its own motion as a result of its decision to reconsider access service compensation and mid-year 1986 interstate access service tariffs for possible intrastate implementation, and as a result of several recent Orders of the Federal Communications Commission ("FCC") that have affected the Commission's consideration of these issues.

The Commission has closely followed the actions of the FCC concerning WATS access lines from a jurisdictional standpoint. Also, the Commission has conducted an extensive investigation into the appropriate role of competition in telecommunications in Kentucky and has released Orders on the subject in Administrative

¹ Wide Area Telecommunications Service. As used in this Order, the term "WATS" refers to 800 service, WATS, and other similar services offered by interLATA carriers. The use of the term is intended to be comprehensive, including both the WATS and WATS-like services of the American Telephone and Telegraph Company of the South Central States, Inc., ("AT&T") as well as all other interLATA carriers.

Case No. 273.² On these and other matters, the Commission is prepared to continue its role to establish telecommunications policy in Kentucky.

Background

Mid-year 1986 and annual 1987 interstate access service tariff filings have involved a policy debate concerning WATS access lines. The debate started as a result of an FCC Order released on May 20, 1986,³ in which the FCC's Common Carrier Bureau required local exchange carriers to remove from interstate tariffs any mandatory restrictions on the use of WATS access lines and to offer any restrictions on the use of WATS access lines as service options rather than service requirements. Specifically, the Common Carrier Bureau ruled that mandatory direct and indirect restrictions on the use of WATS access lines were unlawful and ordered that jurisdictional restrictions involving call blocking and call screening and directional restrictions involving call origination and call termination be made optional.

A number of parties petitioned the FCC for reconsideration of the Order of May 20, 1986. The FCC affirmed the Common Carrier Bureau and upheld its ruling that local exchange carriers should remove mandatory restrictions on the use of WATS access lines from interstate tariffs. However, the FCC indicated that its action

² An Inquiry Into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky.

³ FCC Mimeo. No. 4621, Midyear 1986 Access Tariff Filings, Memorandum Opinion and Order, released May 20, 1986.

represented a departure from the traditional service arrangements associated with WATS access lines, stating that:

The services AT&T chose to create at some point in the past⁴ do not have any special status preventing the OCCs⁴ or AT&T from offering something differing in the future. For example, only one-way and either interstate or intrastate is based upon the premise that WATS service must retain the configuration designed historically for AT&T. That configuration, however, is not compelled by any legal constraint or regulatory policy, and, indeed, any such constraint would be antithetical to the policies articulated in this Commission's recent Orders.⁵

While departing from historical service arrangements associated with WATS access lines, both the Common Carrier Bureau and the FCC made it clear that no attempt was being made to preempt state regulation of WATS service. For example, shortly after the release of the Order of May 20, 1986, the Common Carrier Bureau, in a related matter, stated that:

We wish to clarify that in requiring the elimination of special restrictions on use not generally applicable to special access lines, our Order did not and does not purport to preempt any state restrictions contained in interstate tariffs or any state laws or⁶ restrictions limiting the scope of outside competition.

Similarly, the FCC avoided any attempt to preempt state regulation. In its reconsideration of the Order of May 20, 1986,

⁴ Other common carriers.

⁵ FCC Docket No. 86-535, Midyear 1986 Access Tariff Filings, Petitions for Reconsideration of May 20 Order, Memorandum Opinion and Order, released December 19, 1986, paragraph 17.

⁶ Common Carrier Docket No. 86-181, Midyear 1986 Access Tariff Filings, National Exchange Carrier Association E.C.A. Tariff F.C.C. No. 1, Memorandum Opinion and Order, released on May 30, 1986, paragraph 17.

the FCC, while affirming the Common Carrier Bureau, also stated that:

We do not, however, foreclose the possibility that restrictions might be imposed to implement state commission policies. For example, if a state prohibits the provision of some or all intrastate services by a particular carrier, a LEC⁷ could reasonably block such traffic even if the OCC had not requested such a blocking service. The May 20 Order also would not prevent a state from requiring that WATS services only be provided over jurisdictionally dedicated access lines. We would, of course, expect that the restrictions be clearly stated in the LEC's interstate tariff and adequately justified in materials that are filed to support the tariff.⁸

In this statement, clearly, the FCC recognized the authority of state commissions to establish intrastate policy concerning WATS access lines and its intent to abide with restrictions on WATS access lines imposed by state commissions.

The FCC's most recent action concerning WATS access lines was the Common Carrier Bureau's rejection of BellSouth's tariff transmittals no. 49 and 54,⁹ filed on behalf of South Central Bell Telephone Company ("SCB") and Southern Bell Telephone Company. These tariff transmittals included restrictions on the use of WATS access lines, such that, for example, intrastate calls placed over interstate WATS would be blocked. This and other similar restrictions are consistent with historical service arrangements associated with WATS access lines.

⁷ Local exchange carrier.

⁸ FCC Order released on December 19, 1986, paragraph 19.

⁹ FCC Mimeo. No. 1951, BellSouth Services Tariff F.C.C. No. 1, Transmittal Nos. 29 and 54, Memorandum Opinion and Order, released February 17, 1987.

Before BellSouth filed these tariff revisions, the Common Carrier Bureau had indicated that "a state's intention to impose restrictions on intrastate WATS access lines might be evidenced in a variety of ways."¹⁰ BellSouth, through SCB, attempted to gain evidence of the Commission's policy concerning WATS access lines by way of an interpretation of intrastate tariff requirements obtained from Commission staff.¹¹ The interpretation was designed to satisfy the Common Carrier Bureau's condition that:

...limitations on the scope of outside competition might be included in statutes, rules or policy statements issued by the appropriate state authority or in tariffs which a company is required to follow by state law. It is also possible that the state intention might be demonstrated other than by the explicit state proscription against outside competition which [some parties] suggest would be the only¹² adequate evidence of state intent to limit competition.

Despite indications of state restrictions on the use of WATS access lines, the Common Carrier Bureau rejected BellSouth's tariff transmittals and ordered the removal of jurisdictional restrictions contained in the tariff transmittals, stating that:

¹⁰ Common Carrier Docket No. 86-181, Midyear 1986 Access Tariff Filings, ALC Communications Corporation, Emergency Petition for Declaratory Ruling, Memorandum Opinion and Order, released January 6, 1987, paragraph 16.

¹¹ Bobby L. Redmond, Public Utility Rate Analyst, Public Service Commission of Kentucky, transmittal dated January 8, 1987.

¹² FCC Order released on January 6, 1987, paragraph 14.

BellSouth has failed to produce any probative evidence of state action in support of its jurisdictional restrictions. It fails to state any state tariff provisions, state law, regulation or court decision limiting intrastate competition which would justify inclusion of a mandatory blocking provision in BellSouth's interstate tariff.¹³

Subsequently, the Common Carrier Bureau approved BellSouth's tariff transmittal no. 67, which imposes jurisdictional restrictions on the use of WATS access lines in Tennessee.¹⁴ The action was based on an Order of the Tennessee Public Service Commission requiring jurisdictionally dedicated WATS access lines in Tennessee. Also, the FCC has authorized restrictions on the use of WATS access lines in Mississippi, Florida, North Carolina, South Carolina, and Georgia, as a result of actions taken by these state commissions.¹⁵

Discussion

Although the Commission has never addressed the issue of restrictions on the use of WATS access lines by way of a specific Order, the Commission has approved tariffs that impose directional restrictions and contemplate jurisdictional restrictions. In addition, the Commission has made extensive findings concerning

¹³ FCC Order released on February 17, 1987, paragraph 16.

¹⁴ FCC Mimeo. No. 2368, Ameritech Operating Companies Tariff F.C.C. No. 2, Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, and BellSouth Telephone Companies Tariff F.C.C. No. 1, Memorandum Opinion and Order, released March 31, 1987.

¹⁵ In the case of Mississippi, FCC Tariff Transmittal No. 70, FCC Special Permission No. 87217. In the cases of Florida, North Carolina, South Carolina, and Georgia, FCC Tariff Transmittal No. 74, FCC Special Permission No. 87245.

intrastate competition in general and intraLATA competition in particular in Administrative Case No. 273. The evidence available to the Commission suggests that either BellSouth chose not to submit or the FCC chose to ignore intrastate tariff restrictions on the use of WATS access lines and the Commission's policy concerning intrastate competition.

The Commission views the actions of the FCC concerning the elimination of restrictions on the use of WATS access lines as arbitrary and unreasonable, and as inconsistent with the FCC's own Orders on the jurisdictional direct assignment of WATS access line costs.¹⁶ In contrast to the FCC, the Commission views restrictions on the use of WATS access lines as reasonable and necessary, as the elimination of restrictions on the use of WATS access lines would result in a WATS configuration essentially no different from an MTS¹⁷ common line configuration. In addition, the elimination of restrictions on the use of WATS access lines would have a detrimental impact on the Commission's policy concerning intrastate competition--i.e., specifically, the prohibition on intraLATA competition.

In the opinion of the Commission, the elimination of restrictions on the use of WATS access lines would lead to

¹⁶ Common Carrier Docket No. 78-72 and Common Carrier Docket No. 80-286, MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Memorandum Opinion and Order, released January 7, 1986, and Memorandum Opinion and Order on Reconsideration and Order Inviting Comments, released December 24, 1986.

¹⁷ Message Telecommunications Service.

customer migration from intrastate to interstate WATS and WATS-like services. The result of such customer migration would be reduced intrastate access service revenue, reduced intrastate WATS revenue, reduced intrastate MTS revenue, and intrastate stranded investment. The impact of such reductions in revenue would cause upward pressure on local exchange service rates, which should be avoided in order to encourage universal service. Therefore, restrictions on the use of WATS access lines should not be eliminated and local exchange carriers subject to the Commission's jurisdiction should file any necessary general subscriber, private line, access service, or other tariff revisions to require jurisdictionally dedicated WATS access lines and single in-WATS or out-WATS directionality. Jurisdictionally or directionally unauthorized traffic should be blocked or screened consistent with historical practice. In addition, interLATA carriers should file any necessary tariff revisions to require jurisdictionally dedicated WATS access lines, since, in some cases, the point of initial switching occurs with the interLATA carrier.

Findings and Orders

The Commission, having considered the evidence and being advised, is of the opinion and finds that:

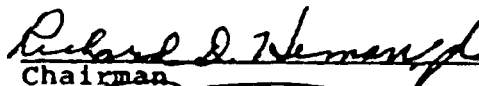
1. Jurisdictional and directional restrictions on the use of WATS access lines should not be eliminated.
2. Local exchange and interLATA carriers subject to the Commission's jurisdiction should file any necessary general subscriber, private line, access service or other tariff revisions

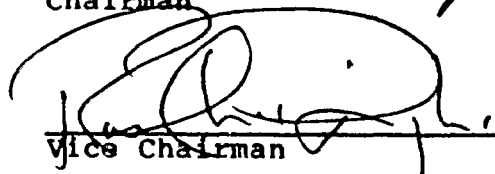
to require jurisdictionally dedicated WATS access lines and single directionality within 30 days from the date of this Order, effective the date of this Order.

Accordingly, each of the above findings is HEREBY ORDERED.

Done at Frankfort, Kentucky, this 1st day of June, 1987.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director